

REMARKS

Claims 1-13 are pending in this application. Applicants thank the Examiner for indicating the presence of allowable subject matter in claims 3-4 and 6-13.

Applicants have amended claim 1 to show that the living organism fixing device is adapted for fixing a living organism. No new matter has been added, nor has the scope of the claim been narrowed by this amendment.

The Examiner rejected claim 5 under 35 USC 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicants regard as the invention. Applicants have amended claim 5 to overcome this rejection. Support for the amendment is found at paragraphs [0094]-[0098]. No new matter has been added, nor has the scope of the claim been narrowed by this amendment.

The Examiner separately rejected claims 1 and 2 under 35 USC 103(a) as being unpatentable over O'Sullivan U.S. Patent No. 5,494,043 in view of Chesney U.S. Patent No. 6,544,188. Applicants respectfully traverse these rejections. The rejections are untenable because the combination constructed by the Examiner is not the claimed invention. Thus, the invention could not have been obvious, even in hindsight.

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on applicants' disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991).

Claim 1 recites a sensor unit having a pressure sensitive portion and a device for fixing a living organism. The fixing device includes a fixing stand for fixing the living organism in position, and at least a fastening band for connecting the fixing stand and the sensor unit to each other and fixedly fastening the living organism to the fixing stand while at the same time activating by pressing the sensor unit against the living organism. The pressure sensitive portion is pressed against the living organism to measure the pulse with the living organism fixed by the fixing device. The fastening band includes a first band portion with one end mounted on the sensor unit and the other end mounted on the fixing stand, and a second band portion with one end mounted on the sensor unit and the other end removably mounted on the fixing stand. The fixing stand includes a tensioning part for pulling the other end of the first band portion with a predetermined force. Claim 2 depends from claim 1, and further comprises a fixing part for fixing the first band portion relatively immovably on the fixing stand with the other end of the second band portion mounted on the fixing stand.

The claimed tensioning part is arranged on the fixing stand for pulling an end of the first band portion of the fastening band with a predetermined force. This greatly facilitates the job of mounting the pulse wave measuring apparatus. Specifically, once the sensor unit is set in position on the living organism, no matter how the fastening band is wound on the living organism, the other end of the first band portion of the fastening band is always pulled under a predetermined tension and therefore always fastened with an appropriate fastening force. As a result, the sensor unit can be mounted easily in an activated state under an appropriate pressure and at an appropriate position on the living organism. Thus, the pulse wave can be measured accurately in stable manner. Also, since the fastening band is always pulled under a constant tension, the sensor unit is less likely to be displaced.

Contrary to the Examiner's assertion, O'Sullivan does not disclose a fixing device that includes a fixing stand for fixing the living organism in position, and at least a fastening band for

connecting the fixing stand and the sensor unit to each other and fixedly fastening the living organism to the fixing stand while at the same time activating by pressing the sensor unit against the living organism. O'Sullivan's wrist stabilizer 50 contains a hold-down bubble 30 attached to a hold-down strap 52. Pressurized air is supplied by means of air tube 32 to hold-down bubble 30 and the bubble is inflated after the sensor and bubble are positioned correctly. Thus, it is O'Sullivan's hold-down bubble that connects the fixing stand and the sensor unit to each other, but it is strap 54 that provides the means of fastening the wrist stabilizer to the subject's forearm. That is not the claimed invention's fixing device. O'Sullivan also fails to disclose applicants' fastening band that includes a first band portion with one end mounted on the sensor unit and the other end mounted on the fixing stand, and a second band portion with one end mounted on the sensor unit and the other end removably mounted on the fixing stand.

The Examiner admits that O'Sullivan does not teach tensioning part for pulling the other end of the first band portion with a predetermined force. The Examiner attempts to supply the missing piece by finding in Chesney a wrist stabilizer base plate member 112 that is secured to a subject with straps 114 and 117 that may be adjusted by pulling. Then, the Examiner equates Chesney's hand-operated adjustable straps to the claimed tensioning part for pulling the other end of the first band portion with a predetermined force.

Applicants respectfully disagree. Neither O'Sullivan nor Chesney teaches or suggests all the limitations of claim 1. O'Sullivan and Chesney do not suggest at all - or show a reasonable expectation of success -- that fixing stands include a tensioning part for pulling the other end of the first band portion with a predetermined force, as in the claimed invention. Combining O'Sullivan's arterial sensor and Chesney's sensor holding and positioning device to produce the invention requires impermissible hindsight.

Even if the resulting combination suggested by the Examiner included all the limitations of claim 1, the cited references provide no evidence of a motivation to combine their disclosures

so as to arrive at the claimed invention. The references must be considered as a whole and must suggest the desirability and thus the obviousness of making the combination. O'Sullivan is directed to a system of providing a hold-down pressure using pressurized air supplied to a hold-down bubble. Chesney is directed to a method and apparatus of holding and positioning an arterial pulse sensor using adjustable straps that secure a wrist stabilizer only. O'Sullivan and Chesney neither use nor suggest all the features in applicants' claimed invention. The Examiner has pointed to no disclosure in Chesney, the alleged evidence of such a motivation, which would have motivated a person of ordinary skill in the art to use O'Sullivan's arterial pulse sensor and Chesney's fastening mechanism. Applicants' invention may be a straightforward and elegant solution to the problem it addresses, but the cited prior art is devoid of a suggestion to make it.

In determining the differences between the prior art and the claims, the question under 35 U.S.C. 103 is not whether the differences themselves would have been obvious, but whether the claimed invention as a whole would have been obvious. *Stratoflex, Inc. v. Aeroquip Corp.*, 713 F.2d 1530, 218 USPQ 871 (Fed. Cir. 1983); *Schenck v. Nortron Corp.*, 713 F.2d 782, 218 USPQ 698 (Fed. Cir. 1983). As already explained, none of the cited references teaches or suggests the claimed invention. Applicants' claimed tensioning part for pulling an end of the first band portion of the fastening band with a predetermined force greatly facilitates the job of mounting the pulse wave measuring apparatus. No matter how the fastening band is wound on the living organism, the other end of the first band portion of the fastening band is always pulled under a predetermined tension and therefore always fastened with an appropriate fastening force, unlike in O'Sullivan or Chesney. Accordingly, the invention claimed is patentable over the prior art, and claim 1 should be allowed. The arguments above also dispose of claim 2, which depends directly from claim 1.

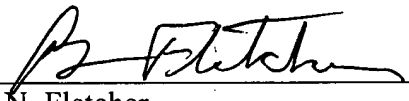
In view of the above, each of the claims in this application is in condition for allowance. Accordingly, applicants solicit early action in the form of a Notice of Allowance

In the event that the transmittal letter is separated from this document and the Patent and Trademark Office determines that an extension and/or other relief is required, applicants petition for any required relief including extensions of time and authorize the Commissioner to charge the cost of such petitions and/or other fees due in connection with the filing of this document to **Deposit Account No. 03-1952** referencing Docket No. **163852020400**.

Respectfully submitted,

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